

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CARL T. HARRIS,

Plaintiff,

v.

OPINION AND ORDER

12-cv-437-wmc

SERGEANT ERIC BILLINGTON,
CO II RUSSELL, CAPTAIN BAUER,
SECURITY DIRECTOR TONY MELI,
SEGREGATION SUPERVISOR PAMELA ZANK,
WARDEN WILLIAM POLLARD, LIEUTENANT
BRAEMER, LIEUTENANT SABISH,
DR. CHARLES GRISDALE, DR. JEFFREY
GARBELMAN, DR. KEVIN KALLAS and
NURSE AMY SCHRAUFNAGEL,

Defendants.

Plaintiff Carl T. Harris is currently incarcerated in the Wisconsin Department of Corrections. He filed this proposed civil action pursuant to 42 U.S.C. § 1983, alleging that the defendants were deliberately indifferent to his threats of self-harm and his need for mental health care. He has already been found eligible to proceed *in forma pauperis* for purposes of 28 U.S.C. § 1983, and made an initial partial payment toward the filing fee, but the court is still required by the Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. For reasons set forth briefly below, the court will grant plaintiff leave to proceed with his claims and will request an answer from the defendants.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts:¹

- At all times relevant to his complaint, Harris was an inmate confined at the Waupun Correctional Institution ("WCI").
- With the exception of Dr. Kevin Kallas, who serves as the Mental Health Director for the entire Wisconsin Department of Corrections system, all of the defendants work at WCI. Sergeant Eric Billington, CO II Russell, Captain Bauer and Lieutenant Sabish are security officers; Security Director Tony Meli, Segregation Supervisor Pamela Zank, Warden William Pollard, Lieutenant Braemer are supervisory officials; Dr. Charles Grisdale and Dr. Jeffrey Garbelman are psychologists; and Amy Schraufnagel is a registered nurse.
- In March 2012, Dr. Grisdale placed Harris under clinical observation on two occasions (March 17 and 27) after determining that Harris was suicidal and, therefore, a danger to himself. Thereafter, Harris returned to his assigned cell in a segregation unit.
- The incident that forms the primary basis for Harris's complaint occurred on April 12, 2012. At approximately 9:00 p.m., which is near the end of second shift, Harris pressed the emergency call button in his cell (A-202) and advised defendant Russell that he was suicidal. Russell contacted Sergeant Billington, who arrived at Harris's cell at around 9:05 p.m. At that time, Harris showed Billington six metal staples and told him that he intended to swallow them because he was suicidal. Billington replied, "I don't see anything and I can't hear you." When Harris told Billington a second time that he was suicidal, Billington replied, "I'm going home. I don't care what you do." After Billington walked away, Harris began to "violently bang his head [and] face against the cell door and wall, resulting in a busted nose with blood all over the cell door, floor and window." Harris then

¹ Harris attaches several exhibits to his complaints, which are deemed part of that pleading and from which the court draws additional facts. See FED. R. CIV. P. 10(c); see also *Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

wrapped himself in sheets and a blanket and began to think of other ways to end his life.

- At around 10:45 p.m. on April 12, a third shift officer (Officer Schilling, who is not a defendant here) noticed that the window to Harris's cell was smeared with what appeared to be blood and attempted to speak with Harris. Harris did not respond. The officer summoned Captain Bauer, who ordered Harris to approach the front of the cell to be placed in restraints. Harris refused repeated orders to comply. Shortly thereafter, Bauer used a chemical agent ("O.C. fogger") to coerce Harris from his cell. Bauer took Harris to the shower and then escorted him to the clinic, where he was examined by Nurse Schraufnagel. Harris told Nurse Schraufnagel that he was suicidal. Instead of placing him under observation for mental health reasons, Bauer escorted Harris to "Controlled Segregation," which is considered a disciplinary status.
- On April 13, 2012, Harris was released from control status and returned to his cell. At that time, Harris wrote to the psychological services department, Pollard, Braemer, Zank and Meli "to inform them of the situation that took place on the night of April 12, 2012."
- On April 14, 2012, Harris told Billington that he was suicidal, to which Billington replied, "Yeah, whatever." Harris then obscured his window with toothpaste. Defendant Sabish was summoned to extract Harris from his cell. When Harris refused orders to uncover his window, Sabish used a chemical agent to remove him from the cell. Sabish then returned Harris to Controlled Segregation.
- On April 17 and again on April 23, 2012, Harris asked to speak with his assigned psychologist, Dr. Grisdale. When Dr. Grisdale failed to respond to his requests for an evaluation, Harris contacted Dr. Garbelman on April 25, 2012. After Dr. Garbelman failed to respond, Harris wrote to Dr. Kallas about the incidents that occurred on April 12 and 14.
- On April 20, Harris submitted an offender complaint through the Inmate Complaint Review System ("ICRS"), alleging that Billington was deliberately indifferent to his need for mental health care and safekeeping by virtue of his ignoring Harris's threats of suicide on April 12, 2012.
- On April 27, Harris was found guilty of violating prison disciplinary rules by refusing to obey orders on April 14. He was assessed 90 days in disciplinary separation.
- On May 1, 2012, Warden Pollard dismissed Harris's complaint against Sergeant Billington, noting that Meli had opened a formal investigation into the matter.

- On May 2, 2012, Harris wrote an offender complaint alleging that, despite making several requests for care following the incident on April 12, neither Dr. Grisdale nor Dr. Garbelman had contacted him to conduct any sort of mental health evaluation. On May 15, 2012, that complaint was dismissed.
- On May 7, Dr. Baird diagnosed Harris with Anti-Social Personality Disorder. The next day, Dr. Grisdale met with Harris concerning the incidents that occurred on April 12 and April 14. Dr. Griswold advised Harris to “take some ownership for [his] actions.” Dr. Grisdale told him that “because of budget cuts and constraints WCI was severely understaffed” and that he “did not have time to ‘babysit’ every inmate with ‘emotional problems.’” Dr. Grisdale did, however, refer Harris for a psychiatric evaluation.
- On May 17, Harris was found guilty of violating prison disciplinary rules by refusing to obey orders on April 12. He was assessed 120 days in disciplinary separation.
- Harris claims that Russell, Billington, Bauer and Schraufnagel were deliberately indifferent to his need for mental health care by ignoring his suicidal behavior and by failing to place him under observation on April 12, 2012. Harris contends that Sabish was deliberately indifferent to his need for mental health care by failing to place him under observation on April 14, 2012. Harris contends Dr. Grisdale and Dr. Garbelman were deliberately indifferent to his need for mental health care because they knew Harris had attempted suicide previously but they failed to contact him after the events on April 12.
- Harris requests injunctive relief in the form of adequate mental health care or transfer to either the Wisconsin Resource Center or Columbia Correctional Institution, “where there are enough highly trained staff to provide adequate treatment for his mental health issues.” Harris also requests compensatory and punitive damages from each defendant.

OPINION

Harris seeks relief pursuant to 42 U.S.C. § 1983, which provides a remedy for violations of the constitution and laws of the United States. Here, Harris alleges that all of the defendants were deliberately indifferent to his need for protection from self-harm and his need for medical or mental health care in violation of the Eighth Amendment to the United States Constitution.

I. Eighth Amendment — Failure to Protect from Self-Harm

The Eighth Amendment to the United States Constitution imposes a duty on prison officials to provide “humane conditions of confinement” by ensuring that inmates receive adequate food, clothing, shelter, and medical care, and that “reasonable measures” are taken to guarantee inmate safety. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). To establish liability based on a failure to prevent harm, an inmate must show that he has been incarcerated under conditions which, objectively, posed a sufficiently serious risk of harm. *Id.* at 834 (citations omitted). For purposes of this element, suicide or attempted suicide by an inmate qualifies as such a risk. *See Collins v. Seeman*, 462 F.3d 757, 760-61 (7th Cir. 2006); *see also Estate of Cole v. Fromm*, 94 F.3d 254, 261 (7th Cir.1996); *Hall v. Ryan*, 957 F.2d 402, 406 (7th Cir. 1992).

Liability under the Eighth Amendment also requires a plaintiff to demonstrate a sufficiently culpable state of mind, known as “deliberate indifference,” on the part of each individual defendant. In other words, “[a] prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Id.* at 847. A prison official “knows of” an excessive risk only if: (1) he is aware of facts from which he could infer “that a substantial risk of serious harm exists”; and (2) he in fact “draw[s] the inference.” *Id.* at 837. Where the harm at issue is a suicide or attempted suicide, this component “requires a dual showing that the defendant: (1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded the risk.” *Collins*, 462 F.3d at 761

(quoting *Matos ex. rel. Matos v. O'Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003) (citation omitted)); see also *Estate of Novack ex rel. Turbin v. County of Wood*, 226 F.3d 525, 529 (7th Cir. 2000) (defendant must be aware of the significant likelihood that an inmate may imminently seek to take his own life and must fail to take reasonable steps to prevent the inmate from performing the act).

As outlined above, Harris contends that defendants Billington and Russell knew he was suicidal, but failed to take any steps to protect him from self-harm on April 12, 2012. Accepting these allegations as true, Harris may proceed with an Eighth Amendment claim against both Billington and Russell on the grounds that these defendants were aware of a serious risk of harm, but failed to take reasonable measures to prevent harm.

II. Eighth Amendment — Denial of Adequate Medical or Mental Health Care

Harris also asserts that Captain Bauer and Nurse Schraufnagel were deliberately indifferent to his need for medical or mental health care on April 12, when they placed him in controlled segregation rather than clinical observation. Harris makes the same claim against Lieutenant Sabish in connection with the cell extraction that occurred on April 14. Harris alleges further that Dr. Grisdale and Dr. Garbelman ignored his repeated requests for treatment after he expressed a desire to commit suicide on April 12 and April 14.

To state a claim for deliberate indifference to a medical condition, an inmate must allege that he suffers from an objectively serious affliction that the defendants knew

about yet failed to take reasonable measures to address. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). At this stage of the proceedings, Harris’s allegations are sufficient to proceed with an Eighth Amendment claim against Dr. Grisdale, Dr. Garbelman and Nurse Schraufnagel for failing to provide adequate medical care.

The allegations against defendants Bauer and Sabish are substantially weaker since they lack medical training and to a large extent acted according to procedure in safely extracting Harris from his cell on April 12 and 14, respectively. Without more, Harris’s allegations are insufficient to state a claim against either defendant.

III. Claims Against Supervisory Officials

Harris also contends that defendants Meli, Zank, Pollard and Braemer ignored his complaints about Billington and failed to respond to his requests for information after the April 12 incident occurred. He also appears to contend that Dr. Kallas ignored his complaints about Dr. Grisdale and Dr. Garbelman. These defendants are supervisory officials. For a supervisor to be liable, they must be “personally responsible for the deprivation of the constitutional right.” *Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)). To show personal involvement, the supervisor must “know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see[.]” *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992-93 (7th Cir. 1988)).

Exhibits attached to the complaint show that defendants Meli, Zank, Pollard, Braemer and Kallas responded in writing to Harris's requests for information concerning his suicidal behavior in April 2012, the disciplinary conduct reports against him, and his need for mental health care. Because the complaint does not allege facts showing that defendants Meli, Zank, Pollard, Braemer and Kallas had the requisite *personal* involvement with the incidents that form the basis of Harris's complaint, however, the court will also deny leave to proceed with claims against these defendants.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Carl T. Harris's request for leave to proceed on his Eighth Amendment claims against defendants Billington, Russell, Schraufnagel, Grisdale and Garbelman is GRANTED.
- 2) Plaintiff's request to proceed on claims against defendants Bauer, Sabish, Meli, Zank, Pollard, Braemer and Kallas is DENIED.
- 3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- 4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- 5) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the

agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 20th day of September, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge